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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,913	08/20/2001	Nghi Van Nguyen	05725.0848-00	4345

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,913

Applicant(s)

NGUYEN ET AL

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) 46-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1 This action is responsive to the applicant's election received by the office on August 21, 2003.

2 Applicant's election with traverse to prosecute the invention of Group I. Election of claims 1-45 is acknowledged. Claims 46-92 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Therefore, claims 1-45 are pending in this application.

3 The traversal is on the ground(s) that the examiner has not demonstrated that examining Group I and II will constitute a serious burden and the search and examination of an entire application can be made without serious burden. This is not found persuasive because the inventions of groups I and II are distinct and they are classified and searched in different classes and subclasses and the search required for each group is not required for the other groups of inventions. Therefore, restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

4 Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

5 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 19-20, 39-41 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Wella AG[Wela] (DE 2014628).

Wella (DE' 628) teaches an aqueous composition for simultaneous straightening and dyeing hair comprising 2.3% of sodium hydroxide as an alkali metal hydroxide and oxidizing agents as claimed in claims 1-5 and 40-41 (see abstract and page 5, Example 3) or 2% of sodium hydroxide as claimed in claims 6 and 43 (see page 6, Example 4), water as claimed in claims 19-20 (see page 6, Example 4), dyes as claimed in claim 39 (see abstract). Wella teaches all the limitations of the instant claims. Hence, Wella anticipates the claims.

Claim Rejections - 35 USC § 103

6 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-8 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wella AG[Wela] (DE 2014628).

Wella (DE' 628) teaches a composition for simultaneous straightening and dyeing hair comprising 2.0% of sodium hydroxide and oxidizing agents as claimed in claims 7-8 and 44-45 (see abstract and page 6, Example 4).

The instant claims differ from the reference by reciting optimal amounts of sodium hydroxide in the composition.

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However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by optimizing the amount of sodium hydroxide in the composition because the reference teaches a composition that comprises sodium hydroxide in the amount of 2.0% which is closed to the claimed percentages, and, thus, a person of the ordinary skill in the art would optimize the amounts of sodium hydroxide in the composition so as to get the maximum effective amounts and would expect such a composition to have similar properties to those claimed, absent unexpected results.

7 Claims 1-4, 9-28 and 30-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US 5,872,111).

Au (US' 111) teaches a shampoo composition comprising sodium hydroxide as claimed in claims 1-4 (see col. 14, line 30), oxidizing agent of hydrogen peroxide in the amount of 0.03% to 3% which is overlapped with the claimed ranges as claimed in claims 9-12 (see col. 30, lines 5-16), clay materials such as aluminum silicates as cation exchange components as claimed in claims 13-15 (see col. 15, lines 5-7), zeolites and aluminosilicates as claimed in claims 16-18 (see col. 20, line 37), water as a solvent as claimed in claims 19-20 (see col. 14, line 44), complexing agent or sequestering agent that dissociate hydroxide compounds such as disodium ethylenediamine tetraacetate, citric acid, sodium basic silicates and tripotassium phosphate as claimed in claims 21-27 and 30-37 (see col. 14, lines 14-32) and amino acids as claimed in claim 28 (see col. 10, line 64), additives such as cationic surfactants as claimed in claim 39 (see col. 14, lines 20-21). Au also teaches a liquid personal product composition (shampoos for hair) as claimed in claims 40-41 (see col. 3, lines 28-30 and col. 9, lines 1-2).

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The instant claims differ from the reference by reciting a composition comprising at least one hydroxide compound and at least one oxidizing agent wherein the ingredients are presented in a combined amount.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by combining the ingredients because the reference teaches compositions comprising all the claimed ingredients and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claim 38, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by incorporating more than one complexing agent because the reference teaches a number of complexing agents that may be used in the composition (see col. 14, lines 29-32), and, thus, a person of the ordinary skill in the art would have been motivated to select more than one complexing agent from those taught by the reference and, would expect such a composition to have similar properties to those claimed, absent, unexpected results.

With respect to claim 42, it would have been obvious to one having ordinary skill in the art at the time the invention was made to activate the composition by using heat because the reference teaches a composition that comprises all the claimed ingredients wherein the formation of the composition required heating (see col. 24, lines 56-61), and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

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8 Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (5,872,111) in view of Pyles et al. (US 2001/0008630 A1).

The instant claim differs from the reference by reciting monosodium glutamate as specific species of an amino acid.

However, the primary reference of Au (US' 111) teaches a composition comprising amino acids as a genus (see col. 10, line 64).

Pyles (US'630) teaches in analogous art a hair treating composition comprising sodium glutamate as claimed in claim 29 (see page 4, paragraph 0091).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time of invention would have been motivated to select any of the species of the genus taught by reference, including those of the claims, because an ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole.

Conclusion

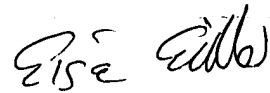
The remaining references listed on form 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Eisa Elhilo
Patent Examiner
Art Unit 1751

October 17, 2003